

## AGENDA BILL APPROVAL FORM

<b>Agenda Subject:</b> Ordinance No. 6234		<b>Date:</b> April 6, 2009
<b>Department:</b> Human Resources	<b>Attachments:</b> Ordinance No. 6234	<b>Budget Impact:</b> \$ 0.00
<b>Administrative Recommendation:</b>  City Council introduce and adopt Ordinance No. 6234.		
<b>Background Summary:</b>  Ordinance No. 6234 amends Chapter 9.54 of the Auburn City Code by adding the following new sections relating to graffiti and malicious mischief: 9.54.020 (K) - Exception for Community Service and Supervised Projects; 9.54.030 - Action against parent for willful injury to property by a minor; 9.54.040 – Rewards for leading to the identification and apprehension of any person who willfully defaces, damages or destroys and public or private property.		
S0420-1 O1.8		
<b>Reviewed by Council &amp; Committees:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission  <input type="checkbox"/> Airport  <input type="checkbox"/> Hearing Examiner  <input type="checkbox"/> Human Services  <input type="checkbox"/> Park Board  <input type="checkbox"/> Planning Comm.         </div> <div style="width: 45%;"> <b>COUNCIL COMMITTEES:</b>  <input checked="" type="checkbox"/> Finance  <input checked="" type="checkbox"/> Municipal Serv.  <input type="checkbox"/> Planning &amp; CD  <input type="checkbox"/> Public Works  <input type="checkbox"/> Community Center         </div> </div>		<b>Reviewed by Departments &amp; Divisions:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Building  <input type="checkbox"/> Cemetery  <input type="checkbox"/> Finance  <input type="checkbox"/> Fire  <input checked="" type="checkbox"/> Legal  <input checked="" type="checkbox"/> Human Resources  <input type="checkbox"/> Information Services         </div> <div style="width: 45%;"> <input type="checkbox"/> M&amp;O  <input type="checkbox"/> Mayor  <input type="checkbox"/> Parks  <input type="checkbox"/> Planning  <input type="checkbox"/> Police         </div> </div>
<b>Action:</b> Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____ <div style="text-align: right;">Call for Public Hearing ____/____/____</div>		
<b>Councilmember:</b> Cerino		<b>Staff:</b> Heineman
<b>Meeting Date:</b> April 20, 2009		<b>Item Number:</b> VIII.A.4

**ORDINANCE NO. 6 2 3 4**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF AUBURN, WASHINGTON, AMENDING  
CHAPTER 9.54 OF THE AUBURN CITY CODE  
RELATING TO MALICIOUS MISCHIEF AND  
GRAFFITI VIOLATIONS**

WHEREAS, the current provisions of the Auburn city Code provide for graffiti abatement in terms of public nuisance and criminal violations; and

WHEREAS, in order to allow graffiti abatement programs, it would be appropriate to amend the provisions of Chapter 9.54 of the Auburn City Code (ACC) to allow minors to possess materials that would otherwise be prohibited other than through a supervised community service program – graffiti abatement or an adult supervised non-graffiti painting project; and

WHEREAS, it is also appropriate to add adult responsibility for graffiti and malicious mischief violations as well as the opportunity for city rewards to resist graffiti and malicious mischief conduct.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

**Section 1. Amendment to City Code.** That chapter 9.54 of the Auburn City Code be and the same hereby is amended to read as follows:

**Chapter 9.54  
MALICIOUS MISCHIEF, RECKLESS BURNING, FIRE**

Sections:

9.54.010	Unguarded fires.
9.54.020	Graffiti violations.
9.54.030	Action Against Parent for Willful Injury to Property by Minor.
9.54.040	Rewards.

9.54.900 Statutes incorporated by reference.

9.54.010 Unguarded fires.

Any person who kindles a fire upon any street, alley, land, lot or block within the corporate limits of the city, which is not so enclosed or guarded as to prevent the same from spreading or being transmitted to any adjoining property belonging to or occupied by any other person, shall be guilty of a misdemeanor. (Ord. 5682 § 1, 2002.)

9.54.020 Graffiti violations.

A. Prohibited. No person shall commit the offenses of graffiti, aggravated graffiti, or possession of graffiti tools, as defined herein.

B. Graffiti Defined. A person is guilty of the offense of "graffiti" if he or she willfully defaces public or private property including any property of the city by painting, spray painting, or defacing property through the inscription of symbols, words, or pictures being transferred onto the face of said private or public property, unless the person is the owner or does have control or custody of the property, or has prior consent of the owner or tenant in lawful possession of such private property, or unless the act is done under the personal direction of said owner or tenant and provided such graffiti will not cause a public nuisance or be in violation of any other state or local laws, rules, or regulations.

C. Aggravated Graffiti Defined. A person is guilty of the offense of "aggravated graffiti" if he or she has been previously convicted of graffiti, or malicious mischief in the third degree, or a similar offense, and commits the offense of graffiti.

D. Possession of Graffiti Tools Defined. A person is guilty of the offense of "possession of graffiti tools" if he or she possesses a pressurized container, acid etch or any other object capable of defacing property, under circumstances demonstrating an intent to commit graffiti.

E. Unlawful to Furnish to Minor. It shall be unlawful for any person, firm, or corporation, except a parent or legal guardian, to sell, give, or in any way furnish to another person under the age of 18 years any pressurized container. It shall be a defense to a violation of this subsection that the person, firm, or corporation which sold, gave, or furnished any pressurized container did so after first obtaining bona fide evidence of majority and identity. For purposes of this subsection, "bona fide evidence of majority and identity" is any document evidencing the age and identity of an individual, which has been issued by a federal, state, or local governmental entity, and includes, but is not limited to:

1. A valid or recently expired driver's license or instruction permit that contains the signature, date of birth, and a photograph of the individual;

2. A Washington State identicard or an identification card issued by another state that contains the signature and a photograph of the individual;

3. An identification card issued by the United States, a state, or agency of either the United States or a state, of a kind commonly used to identify the members or employees of the government agency, that contains the signature, date of birth, and a photograph of the individual;

4. A military identification card that contains the signature, date of birth, and a photograph of the individual;

5. A United States passport that contains the signature, date of birth, and a photograph of the individual;

6. An Immigration and Naturalization Service form that contains the signature, date of birth, and photograph of the individual; or

7. If the individual is a minor, an affidavit of the individual's parent or guardian where the parent or guardian displays or provides at least one piece of identifying documentation, as specified in this subsection, along with additional documentation establishing the relationship between the parent or guardian and the applicant.

F. Unlawful for Minor to Purchase. It shall be unlawful for any person under the age of 18 years to purchase a pressurized container.

G. Possession with Intent. It is unlawful for any person to possess a pressurized container, or any other object capable of defacing property, for the purpose of committing graffiti vandalism.

H. Minor in Possession. It is unlawful for any individual under the age of 18 years, who is not accompanied by a responsible adult, to possess a pressurized container in or upon a public place or private property, without the consent of the owner, lessee, or other person entitled to legal possession thereof.

I. Graffiti Definitions. The following terms shall apply to this section:

1. "Owner" means any entity or entities having a legal or equitable interest in real or personal property, including, but not limited to, the interest of a tenant or lessee.

2. "Premises open to the public" means all public spaces, including, but not limited to, streets, alleys, sidewalks, parks, and public open space, as well as private property onto which the public is regularly invited or permitted to enter for any purpose, the doorways and entrances to those buildings or dwellings, and the grounds enclosing them.

3. "Pressurized container" means any can, bottle, spray device, or other mechanism designed to propel liquid which contains ink, paint, dye, or other similar substance which is expelled under pressure, either through the use of aerosol devices, pumps, or similar propulsion devices, and is capable of marking property.

4. "Property" means any real or personal property which is affixed, incidental, or appurtenant to real property, including, but not limited to, any structure, fence, wall, sign, or any separate part thereof, whether permanent or not.

5. "Unauthorized" means without the prior express permission or consent of the owner of the property or of the person in control of the property.

J. Penalties. Other than as specified in section 9.54.030 of the City Code, Any person violating the provisions of this section shall be guilty of a gross misdemeanor and shall, in addition to any other fine imposed, be further subject to a mandatory imposition of assessment of costs pursuant to Chapter 10.64 RCW in the amount of \$50.00 per day of jail actually imposed; and in addition to this penalty, such person may, in the sound discretion of the court, be directed by the court to erase and remove from any public place or any public

property or any private property with the permission of the owner or the person in possession of the property upon which it is established that such person has committed the offense of graffiti any and all graffiti inscribed thereon by anyone prior to the date of the execution of the sentence. In addition to any financial penalties under this section, any person found guilty of aggravated graffiti shall be punished by imprisonment of not less than five days upon the first such conviction; imprisonment of not less than 10 days upon the second such conviction; and imprisonment of not less than 30 days upon the third or subsequent convictions.

K. Exception for Community Service and Supervised Projects. The provisions of this section shall not apply to instances where the minor is in possession of or has been provided painting supplies as a part of a supervised community service project or a project where adult supervision is provided for a graffiti abatement program or for a non-graffiti painting project. (Ord. 6188 § 1, 2008.)

9.54.030 Action Against Parent for Willful Injury to Property by Minor.

The parent or parents of any minor child under the age of eighteen (18) years who is living with the parent or parents and who shall willfully or maliciously destroy, damage or deface property, real or personal or mixed, shall be liable to the owner of such property in a civil action at law for damages in an amount not to exceed five thousand dollars (\$5,000.00). This section shall in no way limit the amount of recovery against the parent or parents for their own liability under negligent or intentional tort or other basis under the law.

9.54.040 Rewards.

The City may offer a reward not to exceed three hundred dollars (\$300.00) for information leading to the identification and apprehension of any person who willfully defaces damages or destroys any public or private property by the use of graffiti, malicious mischief, or reckless burning. The actual amount awarded (not to exceed \$300.00) shall be determined in the discretion of the Chief of Police. In the event of damage to public property, the offender or the parents of any unemancipated minor must reimburse the City for any reward paid. In the event of multiple contributors of information, the reward amount shall be divided by the City in the manner it shall deem appropriate. Claims for rewards under this section shall be filed with the Chief of Police or his/her designee in the manner specified by the Auburn Police Department. No claim for a reward shall be allowed unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this section have been satisfied.

9.54.900 Statutes incorporated by reference.

The following statutes are incorporated in this chapter by reference:

RCW

9.40.100(1) Tampering with fire alarm or fire fighting equipment – False alarm – Penalties (effective until July 1, 2004)

9.40.100 Tampering with fire alarm or fire fighting equipment – False alarm – Penalties (effective July 1, 2004)  
9A.48.050 Reckless burning in the second degree  
9A.48.060 Reckless burning – Defense  
9A.48.090 Malicious mischief in the third degree  
9A.48.100 Malicious mischief – Physical damage defined  
27.12.330 Penalty for injury to property [libraries]  
(Ord. 5822 § 2, 2004; Ord. 5682 § 1, 2002.)

**Section 2. Implementation.** The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

**Section 3. Severability.** The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

**Section 4. Effective date.** This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: \_\_\_\_\_

PASSED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

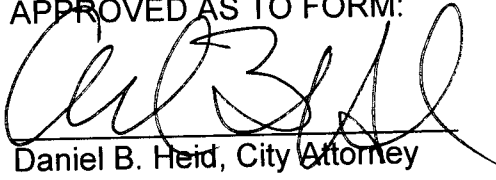
**CITY OF AUBURN**

\_\_\_\_\_  
PETER B. LEWIS  
MAYOR

ATTEST:

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Daniel B. Heid, City Attorney

Published: \_\_\_\_\_